

Wiretap Guidelines Draw ACLU Fire

1/2/79
By Harold J. Logan
Washington Post Staff Writer

A Carter administration bill that would govern the use of electronic surveillance is drawn so vaguely that it could widen rather than restrict the intelligence agencies' latitude to eavesdrop on Americans and foreign nationals in the United States, a House subcommittee was told yesterday.

"It would be ironic for the Congress to establish an investigative standard broader than the one J. Edgar Hoover and the CIA used" to bug thousands of communications, said American Civil Liberties Union legislative counsel Jerry Berman. "And that's what we see this bill doing."

The civil liberties organization asked a House Intelligence subcommittee to amend the Carter proposal to tighten its guidelines for bugging. The testimony came on the second day of hearings into four bills that would control electronic surveillance for foreign intelligence purposes, an area now unregulated by Congress or the courts.

The administration bill and two others would inject an element of prior judicial review into the process of deciding whether an electronic bug or wiretap is appropriate. The fourth bill would leave the decision in the hands of President and advisers.

Arguing that the decisions Congress makes in the foreign intelligence wiretapping area will set the standards for other legislation governing the conduct of the intelligence community, ACLU spokesmen attacked the administration proposal for what they called its "low investigative standard."

ACLU executive director John J. F. Shattuck said the bill is "seriously flawed because it permits the government to target persons for electronic surveillance without probable cause—or even a reasonable suspicion—to believe they are engaged in a crime."

As the bill is written, he said, it would permit wiretaps of the kind the FBI used against the late Rev. Martin Luther King Jr. "for 'knowingly' associating with a person suspected of secret Communist activities, even

though King knew nothing of those activities."

Berman also noted that the bill does not define the "clandestine intelligence activities" that could be the basis for court-approved wiretaps. "Under a previous administration, as you know, everyone who opposed the Vietnam war became a foreign agent involved in clandestine activity," he said.

At a hearing on the same bills held Tuesday, Attorney General Griffin Bell conceded the Carter administration is uncertain whether evidence of criminal activity should be required before judges issue wiretap warrants under the bill.

As the bill is now written, wiretaps or bugs would be authorized against foreigners involved in "clandestine intelligence activities," officers or employees of a foreign power, Americans secretly collecting or transmitting information for foreign intelligence service when that activity might be harmful to U.S. security, and Americans who knowingly aid or abet persons engaged in clandestine intelligence activities.

Bell said circumstances reflected in the bill's standards for issuance of warrant are "tantamount to a crime."

Rep. Robert McClory (R-Ill.), author of the bill that would not require judicial approval of wiretaps, raised another issue—whether judicial review would be any better assurance against abuses than review within the executive branch.

A wiretap hearing would be held by "special judges," McClory said. "It's a secret, it's ex parte (held without the presence of one of the interested parties). The judges are going to be palsies . . . So the judicial review is really a myth—there won't be any review on the merits."

"I don't see what's contemplated here as any sort of pro-forma judicial approval," responded Louis H. Pollock, dean of the University of Pennsylvania Law School, who was also a witness.